

CAPTIVISION



Closed Captions

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MM95-176

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FCC MAIL ROOM

February 26, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Implementation of Section 305 of the  
Telecommunications Act of 1996

#### BACKGROUND - CAPTIVISION

CAPTIVISION is a minority owned, small caption provider. We have been in existence 10 years, initially pioneering captioning in the State of Alaska, where we continue to provide services to this day. We also maintain a second office in Nevada. Through an affiliate relationship, our captions are also seen on two major national networks. We are one of the few, I believe, who provide high-quality captions at a reasonable rate.

Our growth has been slow and hard to come by. Since our inception, local broadcasters have recognized the significance of our service, yet have no mandate to provide it even when it is economically feasible to do so. The national market is virtually impenetrable. We are not, nor ever have been, the direct recipient of DOE funding. The four major national caption providers, to my knowledge, are all recipients of federal funding. It makes a big difference to a network if you are bringing funding to the table, along with your service.

As a small company, we have no marketing staff or grant writers. We are in position to grow and expand, but it is extremely difficult to develop the relationship with the broadcaster and provide the funding for your service.

#### Comments on Notice of Proposed Rulemaking

#### III

28. Responsibility for compliance with closed captioning requirements should rest with the video programming providers. As the Commission points out, although the burden is placed on the producer to include captioning in their programming, the video programming provider can aid in compliance by making this a stipulation of the programming.

B. Obligations as to Non-Exempt Programming - Transition Rules for New Programming.

41. I feel an eight-year phase-in period is too long. In

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theory, programming providers could do absolutely nothing for 23 months, and then begin captioning 25% of their programming. I think a ten-year phase in should be out of the question.

I would propose a four-year phase-in period, with 25% compliance in each year. This Act is basically a Civil Rights Act for the Deaf and Hard of Hearing. Why make them wait eight years? I firmly believe the captioning community, though small at this time, can grow and meet the demands of a growing market. This is something I've been waiting for. When I solicit new clients, I'm told repeatedly there is no mandate, we have no funds, or they are already captioning with ENR, which is not acceptable to many Deaf and Hard-of-Hearing viewers. I must have the work before I can develop the work force. There are many qualified court reporters that can be trained in as captioners. The work force, with a reasonable implementation period, is there and can meet the needs of Congress' intent in Section 713 to provide full accessibility to video programming.

If the Commission should impose the eight-year implementation schedule, I would urge the mandate of some compliance for the first year. Even 10% could have a very positive impact. If the video programmer or producer cannot solicit captioning in a cost-effective manner, this may be cause for a conditional waiver, which could be revisited after a specified period of time.

I agree the program providers should prioritize programs for initial captioning, and not the Commission, with the initial target being news and public affairs programming.

43. With regard to the MVPDs, I feel the standards should apply to each channel, and not the cable company as a whole, for compliance with the initial 25% requirement. There is much diversity in viewership, and captioning resources should be available in a wide variety of programming.

Also, to use existing captioned programming to meet the phase-in requirement does not make progress. The goal of 100% captioned programming is stunted from the beginning if you accept existing captions as having already met the initial goal of 25% in two years. Every program provider should start from ground zero in their particular case, which will not be equal for all. All program providers should base their goal for compliance based on percentage of programming not currently captioned. As an example, if a broadcast station is currently captioning 10% of their programming, they would have the Commission's prescribed phase-in time to provide captioning for 90% of their existing program schedule.

44. As with video programming providers and producers, the MVPD can mandate the programming picked up from broadcast stations

for retransmission must be captioned. Unless the program to be broadcast by the MVPD is live, where there could be a shared responsibility, it is more feasible that the captioning be performed for the specific broadcast station, thus avoiding the need for multiple encoders on-site at the MVPD.

45. Since I support the per-channel basis for compliance for MVPDs, I don't know if there is a significant difference between a week's coverage versus a month's coverage to meet the percentage requirement. I would support basing the percentage in one-month increments, and thus perhaps cut down on the administrative burden of showing compliance.

46. The current level of closed-captioning should not be reduced under any circumstances. I think that's like one step forward, two steps back. The purpose of the DOE grants was to kick-start the captioning process and allow the host broadcast station to garner their own financial support for the captioning service, whether that is to be absorbed in-house or in partnership with private or corporate sponsorships. The current level of captioning should not be reduced regardless of the availability of DOE funding.

47. Of course, if a program is captioned and is rebroadcast, the captions should also be a part of the rebroadcast. The entity that may reformat the program should be responsible for ensuring the captions are intact for the rebroadcast. If a program has repeat or rebroadcast value, it would be senseless to strip the captions. The cost of rebroadcasting a captionless program should far outweigh the expense of reformatting the captions for air. Reformatting the captions should become an integral part of the editing process.

48. Is it possible during the digital transition to allow for backwardly compatible receivers? A PBS affiliate in Alaska has gone statewide with the digital signal. This has not affected our ability to caption their programming. The problem is picking up their signal with our current satellite receiver. Our option is to view the programming through our cable provider, with a choice of two different channels to view the programming. We must caption from the origination site. Barring the expense of investing in the appropriate receiver, which would have limited use at this time, I would look for the industry to provide the option of an upgrade or backwardly compatible technology if possible. Depending on the rate of digital conversion, this could conceivably be a costly part of doing business, and would increase the cost of the captioning service.

49. Is it possible to revisit the issue of multiplexing? As with the MVPDs, unless the requirement applies to each channel versus the cable programming as a whole, lack of captioning for multiplexing would be inconsistent. However, in the least, the

passing through of existing captions for multiplexing should be mandatory.

C. Obligations as to Non-Exempt Programming - Transition  
Rules for Library Programming

57. Perhaps the "expectation" of the Commission that library programming will be captioned to maximize accessibility is enough. I agree this should not be held to the same standard as new programming, but could be addressed with the longer implementation period of ten years. Or 75% of their most often rebroadcast movies or series. As technology and programs develop that enhance the captioning process, I don't think this will be economically burdensome. I also would hate to miss the classics due to a captioning requirement, but the Deaf and Hard of Hearing are already missing out.

It is my understanding a stand-alone captioning system for off-line captioning can be purchased for a one-time cost of approximately \$8,000. The preparation, formatting and time coding does not require the specialized expertise of a stenocaptioner. Also, with the ability to import existing script, the amount of labor is considerably reduced, as is the cost.

D. Exemptions of Classes of Programming and Providers Based  
on Economic Burden

64. Music videos should not be exempt. Even as a hearing person, I could benefit from captions. Exceptions would be symphonic or instrumental. Live programming is essential. HBO's pay-per-view and pay-per-channel premium services should not be exempt. A portion of the fee HBO charges for these services can fund the captioning process.

66. Regional sports are of great interest to many, and the Deaf and Hard of Hearing should not be excluded from these events. The technical or logistical problems of delivering different games to affiliates in various parts of the country at the same time can be solved with multiple encoders at the uplink site. In other words, an encoder for each region. Depending on the circumstance, these encoders may be owned by the caption provider, who has the staffing capability to caption multiple games at the same time. Most caption providers also have satellite dishes that allow them to pick up many different feeds that permit direct viewing of the game being televised. Though not advisable, sports may be captioned from the use of an audio line if video is not available. The captions can be formatted such that they do not interfere with normal viewing. The only problem is that captions may not be blanked when there is full-screen chyron. As addressed in the standards portion, this would improve over time.

Sports are visual and there are occasional statistics

that are fonted, but this in no way can replace the value of captions. So much information is gained from the announcers and interviews, background stories, that this is a prime example for full access.

Though production costs are not spread out for sporting events, commercial time and market value is high. Captioning is imperative and can be funded.

67. Exemptions should be granted on a very narrow basis, such as for commercials or foreign language programming. News, weather, sports, live programming and locally-produced programming should all be mandatory for the captioning requirement.

69. ENR does not provide "full" access. A station we previously provided real-time services for converted to the ENR method. We did integrate with this system and for a time everyone was happy: the station had cut some cost and the Deaf community had full access. After corporate sponsorship of our service did not continue due to budget cuts, the station relied solely on ENR. The Deaf community has been very frustrated and many have tuned out. They will no longer view a news broadcast with so many gaps and unedited script. Also, it is the exceptional teleprompter operator that can keep pace for the news anchors and also be aware of the captioning viewers. Some operators send script too fast, too jerky for the captioned format, or leave the system blocked so no captions appear at all. Also taking into account the percentage of the broadcast that is not scripted, ENR alone does not provide sufficient captioning coverage.

I would strongly urge the Commission to mandate the captioning of local news and that ENRs augment their existing captions with the use of a stenocaptioner. A station cannot meet the 100% requirement by only captioning 30% of a newscast. They must provide 100% coverage to meet the 100% compliance mandate. I understand the initial shortage of stenocaptioners in some very small markets. However, in this age of telecommuting, this may not be an issue. If the top two stations in a very small market cannot secure captioning service in the initial phase-in, this may be cause for a temporary conditional waiver. The station should provide proof they have attempted to procure the service and were unable to do so.

70. Congress' intent is full accessibility and this does not have to be economically burdensome. The particular market or region of a broadcaster drives the captioning cost. When entering a new local market for captioning services, rates are often based on the earnings of court reporters in the area. Where this does become economically burdensome is when a broadcast station, through their sales department, seeks out a corporate sponsor. This sales department adds 15% to the captioning cost. The marketing division for a potential sponsor also adds 15%, raising the captioning cost

by 30%, and thus becoming burdensome. The local caption providers will have varying rates for their services, but they are nowhere near the high end for national network captioning and should not be considered burdensome.

It is imperative that captioning become an integral part of the production cost for video programming providers, whether they choose to absorb this cost in-house or through outside sponsorship. It should not and cannot be the responsibility of the caption provider to procure the funding for their service through federal grants or corporate sponsorship. Captioning must become a fixed cost of production, absorbed by the broadcaster or producer.

71. There should not be a class exemption for programming. Where there is a broadcast station there are court reporters, the potential personnel to provide this service, based on local market value. This group will grow through the implementation period. The market size, degree of distribution, audience ratings or share are irrelevant to Congress' intent of full accessibility.

72. Only twice in ten years has the issue of captioning in a foreign language come up. I do have a captioner fluent in Spanish, and at the time of the second request I did have software capable of captioning in that language. However, this was to be very labor intensive, and thus not cost effective for the producer. Foreign language productions should be exempt from mandatory captioning.

73. Textual programming should also be exempt. An example is a community channel airing schedules of upcoming events and classes. The only audio is a music track. I think the test for this exemption should be that there are no anchors or verbal audio track, and all information is displayed visually. If there is no need for captions, would the producer be willing to cut any existing audio for the hearing viewers?

74. PEG access programming should not be encompassed by the Commission's general exemptions for the stated reasons of presenting important governmental, educational and community information. The test for exemption should be if the programming has a high public interest value and would impact the Deaf community's interaction with their environment.

76. As with PEG access, instructional programming carries a high public interest value. Though they may have small production budgets, captioning does not necessarily have to be burdensome. Much of the script for this type of programming would be available on disk, that a captioner can convert and import for live display, thus reducing much of the preparation time and the captioning cost. As opposed to time-coding the captions, they can be manually rolled or popped onto the screen with very accurate timing. This method may be sufficient for the initial implementation period and keep the captioning cost down. Live programming would have to be real-

timed, but could be recorded, using the Captioned Submaster for rebroadcast. Because this is educational in nature, perhaps there could be a tax-based incentive to provide the captions.

77. What cost for captioning a commercial would offset the revenues generated by the commercial? The producer and captioning entity can work together to keep costs down. As with the PEG issue, if the dialogue is provided on disk and time-code format is not required, the cost of captioning can be substantially reduced. Most local broadcast stations will have an encoder and taping facilities so the Captioned Submaster can be created. Broadcasters can also help keep cost down by not charging high rates for use of their encoder or edit suites while the captioning process is accomplished.

I believe there is marketplace incentive for advertisers to caption their commercials, and over time they will voluntarily include captioning of their productions without a mandate.

78. I agree that Home Shopping programming should not be exempt from this mandate. A portion of the revenues generated by this kind of programming can fund the stenocaptioners, and should become a part of the production cost.

79. Provided that interstitials and promotional advertisements provide a graphic display of the audio content, they may be exempt from the captioning mandate. The short production time-frame does make captioning more difficult, but not necessarily an undue burden.

80. Political advertising is important programming, but the lack of captions will send a message about the candidate that chooses to exclude the Deaf and Hard of Hearing from their message. Candidates should be aware of the option to caption, but not mandated to do so.

81. The expense of captioning fundraising activities for noncommercial broadcasters may outweigh the benefits derived from the fundraiser. Fundraising activities could, however, expand their efforts to include the funding to caption future programming. These activities usually go on for an extended period of time, which could reduce the ultimate benefit of the fundraiser.

82. Music videos should be closed captioned. Many have sufficient production budgets that allow the captioning to become a part of the production cost. I agree that symphonic and instrumental concerts can be exempt.

To caption a live musical performance in real-time would be extremely difficult unless sufficient preparation materials are available. When captioning the Midnight Mass, all musical segments are entered in advance to ensure high quality. It is very

difficult to hear and understand a full choir without prior knowledge of the lyrics. Rap would be out of the question. Any attempt to real-time live musical programming I think would fall short of existing quality standards within the captioning industry.

However, should a live performance be marked for rebroadcast, captions should be included. Music is a very important part of the culture of our society, and the Deaf and Hard of Hearing are entitled to full access.

83. I would strongly urge the Commission not to grant an exemption to weather programming. There are many health and safety issues as a result of forecasts that cannot be fully conveyed through the occasional use of on-screen graphics. It is impossible for those Deaf who read lips, to do so when the forecaster frequently turns to their side, showing only their profile, and often moving off screen. There may also be terms that are fonted, such as "isobars" or "nearly stationary cutoff low," the meaning of which needs to be conveyed through captions. If ENR is the only method used on a local level, script should be added for the weather segment. Other weather programming can be captioned in a cost-effective manner that would not outweigh its utility. There are existing caption providers that offer a high-quality product at a reasonable rate.

84. National and regional sports programming should not be exempt from the captioning mandate. I can understand a potential economic burden when looking to the local high school or college-level game. I would recommend the Commission look at the standings of a particular team in their division when determining the application of an undue burden. If a team is not in the top five of their division, there is probably less public interest and a greater hardship to provide the captioning service. Local high school budgets are shrinking and captioning should not endanger any aspect of the school or its athletic programs.

On the college level, it may be that a football game, for example, could be captioned on a local level at a cost of \$200 to \$300. This is a reasonable cost for a college athletic program to absorb. High schools should not be held to the same burden as national network commercial programming. Though college sports should not be given a general exemption, a lower economic burden criteria should be established for those programs not in the top of their respective divisions.

A more graphic standard for smaller markets, high school or college, should be implemented if captioning is not mandated.

#### F. Exemptions Based on the Undue Burden Standard

91. The threshold for economic undue burden should be high. Rates for captioning services are market driven. As an example,



the NBC affiliate news anchor in Anchorage, Alaska is not paid the same as NBC's Tom Brokaw. Similarly, the caption providers cannot and will not have the same rate structure as a national caption provider.

92. There should be separate standards for national versus local markets in how the exemption should be applied. No exemptions should be applied to the national level as they have greater resources and revenues. Broadcasters may find it most efficient to hire stenocaptioners in-house versus independently contracting for the service. However, captioning must not be a variable cost. Captioning must become an integral part of production, and therefore a fixed cost for producers and\or broadcasters. Closed captioning cannot be placed in jeopardy during budget cuts or fiscal reductions.

95. Specific criteria should be set forth for the exemption criteria. I'm not directly familiar with production budgets, but captioning must become a fixed cost. Part of the proof for undue burden should include a minimum of 5 bids from various caption providers, illustrating the captioning expense would be disproportionate to other production costs. Using "wider discretion" would slow down the review process and could allow loopholes.

97. Should a small local station be granted a conditional exemption, this should be for a limited time. The waiver should be reviewed within six months to a year's time. As part of the proof of economic burden, the local station should provide the Commission or reviewing body, evidence that it has tried to comply with the captioning mandate, and negotiations for a reasonable market price were unsuccessful.

99. Public notice and public comment should be an integral part of the waiver procedure and should be given due consideration.

101. Producers and syndicators cannot be excluded from the exemption process as the captioning burden is initially placed on them. Conceivably, if one program is not captioned, you could wind up with several requests for exemption for the same program, depending on its destination. For instance, a program is locally produced, airs on one broadcast station, is picked up by a cable network, and eventually airs on national television. It would be too cumbersome for each entity to apply for an exemption. All parties should have access to the exemption process, but the first line should be the producer or owner, who then could provide proof of their waiver to anyone who should air their program.

102. All exemptions should be revisited after a specified time. With increasing technology and a growing number of caption providers, conditions will change rapidly and the reason for the exemption may no longer exist. Exemptions should be reviewed on a

six-month to one-year basis.

#### G. Standards for Accuracy and Quality

105. It is not necessary for the Commission to impose standards for the content of closed captioning. Market forces and competition are driving factors for self-imposed standards of high-quality captions. The caption provider's goal is to fully satisfy their client and the viewing consumer, and high-quality captions are of great concern. The captioner who does not provide a quality service or does not improve quality when notified, will not be able to remain in business.

106. The caption data must be maintained for the entirety of the program.

Post-production captioning does allow for the inclusion of soundeffects in the caption or other nuances, such as a doorbell ringing. During real-time captioning, depending on the speed of the audio, there are times it is impossible to include such nuances. Usually these soundeffects are referred to in the audio portion, such as a loud bomb blast or thunderous bolt of lightening. Speaker identification is currently used whenever possible.

Spelling errors I have witnessed come more often from the ENR-generated captions. Newsroom reporters are struggling under tight deadlines and do not run a spell check on script that is sent to air as a caption. On the other hand, stenocaptioners' dictionaries are well-maintained and monitored and result in very minor, if any, spelling errors. Grammar is not an issue for the caption provider. We caption verbatim whenever possible and do not edit for grammatical content. The timing and placement of captions are dictated by the program format. Captions are placed such that they do not interfere with existing on-screen graphics or content of program video.

108. To impose certification criteria on a new-growth industry would be counterproductive. Current caption providers continue to maintain high-quality standards. However, it is unrealistic to expect a new stenocaptioner in a local market will have the same expertise as a network caption provider that has been providing their service for a number of years. Though I am certified at 260 words per minute, I know of others who are not, yet possess the speed and accuracy to perform the captioning process. Certification standards imposed in the initial phase-in will hinder growth of the industry. The caption provider who does not achieve a high standard will not be able to maintain a customer base.

Conversely, the broadcasters who rely on ENR-generated captions do not seem to have the impetus to improve. The general viewership needs to be encouraged to contact their broadcaster or

caption provider with concerns and comments. They should be able to seek remedy from the Commission if such quality issues are not resolved in a timely manner.

113. The small number of caption providers is currently due to demand. Increase demand and the industry will grow. There are a large number of court reporters nationwide who can be trained as stenocaptioners. As quoted from "The Field of Dreams," "If you build it, we will come." If we have a work base, the industry can and will grow.

115. As previously stated, there is great disparity in captioning costs. National network captioning rates cannot be transferred to a local market. As competition in the industry grows, rates will stabilize.

121. ENR alone is not sufficient to meet Congress' intent of a program being fully accessible. It is nonsensical to allow the captioning of 30% of a program's content to meet the standard of 100% accessible. In the very least, the small local broadcaster with the greatest market share in their location, should employ the use of real-time stenocaptioners to augment their captioning. As the captioning industry grows, this issue should be revisited. With the exception of perhaps rural areas, during the phase-in period broadcasters using ENR should incorporate real-time into their coverage. As the ENR system is a one-time fixed cost, once these systems are paid for, the current support of financing of this system could be converted to fund the addition of real-time captioning services.

#### IV. Enforcement and Compliance Review Mechanisms

122. Your proposed complaint process seems to be the most streamlined and effective. Complaints should be documented with objective evidence such as a videotape or production logs of what is being captioned.

123. The complainant should first try to resolve any problems directly with the programming provider, with a time certain for resolution. Technical issues can be resolved more quickly than complaints regarding a quality standard. In general, if after two weeks of notifying the provider of their concerns and they remain unresolved, the complainant should be allowed formal recourse through the Commission. Not knowing the resources or number of personnel to be delegated by the Commission to resolve these issues, I would urge the shortest time-frame possible for a final ruling.

124. It would not seem to be an administrative burden for the video programming provider to create and maintain a public file which contains the amount of captioning they are performing. Alternatively, records could be maintained on computer and

available to be downloaded on request.

#### V. Administrative Matters

154. The definition of economic burden should also include the percentage of production costs that would be targeted for captioning. The video programmer must solicit bids for the captioning service in order to prove it is an economic burden.

156. Taking into account the Paperwork Reduction Act, it would have been great if I could E-mail or upload my comments directly to you; a much more efficient use of time and resources. :-)

My opinions expressed herein are from direct experience and knowledge. I would strongly urge the Commission to impose the mandatory implementation of closed captioning and comply with Congress' intent of full accessibility. Thank you for your consideration.

A handwritten signature in cursive script, reading "Nancy L. Means", followed by a horizontal line.

Nancy L. Means, RPR-CM-FCRR  
Owner